IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23/07/2003

CORAM

THE HONOURABLE MR.JUSTICE M. CHOCKALINGAM

CRL. APPEAL NO.1759 OF 2002 AND CRL.APPEAL NO. 1760 OF 2002

1. Sri Bhuvaneswari Finance
W-7-3/30 Main Bazar
Uthamapalayam
rep. by accused No.2
Ramanathan

2. Ramanathan .. Appellants in
CA.1759 of 2002

Rajasekaran .. Appellant in
CA.1760 of 2002
-Vs-

The Inspector of Police
Economic Offences Wing II
Theni district .. Respondent

These appeals are preferred under Section 11 of TN Protection of Interest of Depositors Act, 1997 against the judgment and sentence dated 12.11.2002 in C.C.No.11/2001 on the file of the learned Special Judge under TNPID Act, 1997, Chennai.

!For Appellants : Mr.K.Selvaraj

^For Respondent : Mr.O.Srinath,
Govt. Advocate(Crl. Side)

:COMMON JUDGMENT

This judgment shall govern both the criminal appeals, namely, C.A. Nos.1759 and 1760 of 2002.
2. The appellants, who were ranked as A1 to A3 in C.C.No.11 of 2001 wherein they along with four others stood charged and tried under Section 5 of TNPID Act and Sections 120(B) r/w 420 and 406 I.P.C against 2 to 7 and A1 was found guilty under Section 5 of TNPID Act and sentenced to pay a fine of Rs.60000/-, while the second and third accused were found guilty under Section 5 of TNPID Act and sentenced to undergo R.I for six years and to pay a fine of Rs.60000/- in default to undergo S.I for a period of six months and A2 and A3 were acquitted of the other charges levelled against them and all other

accused, namely, A4 to A7 were acquitted of all the charges levelled against them, have brought forth these appeals.

2. The short facts necessary for the disposal of these appeals can be stated as follows:

a) The first accused Sri Bhuvaneshwari Finance in Door No. W-7-3/30 Main Bazar, Uthamapalayam was run by the Accused 2 to 7. They were receiving deposits under various finance schemes including Fixed deposits from the public in the name of the first accused. Fixed Deposits were collected from PW1 Venkatraja, PW2 Gandhidas, PW3 Veerappa Pillai, PW6 Krishnakumar, PW10 Mani @ Nallakannu, PW11 Vinodhya Raman, PW14 Lakshmaniaha, PW15 Rajeswari, PW16 Muthuveer, PW18 Sulochana, PW19 Pitchaiammal, PW20 Rajappa, PW24 Rangamani, PW26 Bhagavathy, PW28 Jayaprabhu and PW30 Suruli Rangan. In respect of the same, fixed deposit receipts under Exs.P3, P4, P5, P6, P7, P8, P9, P13, P14, P18, P19, P20, P21, P60, P61, P65, P75, P82, P86, P87, P88, P91, P92, P94, P95 , P109, P110, P118, P128, P129, P130, P.131, P148 and P166 were issued to those witnesses. The accused Nos.2 to 7 have also collected amounts from PW1 Venkatraja, PW2 Gandhidas, PW4 Muthiah, PW5 Lakshmanan, PW6 Krishnakumar, PW7 Pitchaimani, PW8 Vasantha, PW10 Mani @ Nallakannu, PW11 Vinodhya Raman, PW13 Pechiammal, PW15 Rajeswari, PW17 Jayakumar, PW18 Sulochana, PW20 Rajappa, PW21 Ramalakshmi, Pw23 Selvam, PW25 Muthazhagan, PW27 Muniyappan, PW29 Rajammal and PW30 Suruli Rangan in the name of the said financial establishment and issued passbooks to those witnesses under Exs.P1, P2, P11, P12, P29, P30, P32, P33, P34, P35, P36, P37, P41 to P49, P51 to P54, P56, P57, P62, P63, P66, P67, P71, P72, P73, P77, P78, P79, P80, P84, P89, P96, P101, P102, P1 03, P113, P114, P120, P121, P122, P123, P124, P125, P126, P142, P144, P163, P164 and P167.

b) The accused have collected amounts from P.W.6 Krishnakumar, Pw22 Narayanan, and PW29 Rajammal under Super deposit scheme and issued receipts under Exs.P39, P40, P108, P153, P154, P155 P156, P157, P158, P159, P160, P161 and P162. For the amounts received from PW2 Gandhidas, PW3 Veerappa Pillai, PW20 Rajappa, PW21 Ramalakshmi, PW23 Selvan, PW26 Bhagavathy, PW27 Muniyappan, PW28 Jayaprabhu, PW31 Balu, PW32 Ramasubbu, and PW33 Ellammal, the accused 2 to 5 have executed promissory notes under Exs.P15, P16, P22, P23, P24, P25, P26, P27, P97, P98, P99, P104, P105, P106, P115, P116, P132, P133, P134, P135, P136, P137, P138, P139, P140, P145, P146, P149, P150, P151, P169, P179, P171, P1 72, P173, P174, P176, P178 and P179. Without returning the said deposit amounts made by the above witnesses, the accused 2 to 7 have suddenly closed the financial business run in the name of A1. Hence, the depositors made complaints to the police, which were marked as Exs.P.1 0, P17, P28, P31, P38, P50, P55, P58, P59, P64, P69, P70, P74, P76, P81, P83, P85, P90, P93, P100, P107, P112, P117, P119, P127, P141, P14 7, P152, P165, P168, P175, P177, and P180.

c) PW34 Susai Pandian has deposited his amount with A1 financial establishment. In lieu of the deposit, the second accused has transferred his property through his power agent PW36 to PW35 son of P.W.34. PW37 the Sub Inspector of Police, Economic Offences Wing II, Theni received the complaint given by PW1 and marked the same as Ex.P.1 on 17.10.2000. On the strength of Ex.P.1, a case was registered against the accused in Crime no.1/2000 under Section 5 of TNPID Act, 406, 420 and 120(B) I.P.C. The printed F.I.R. was marked as Ex.P.181. The Inspector of Police, EOW II, Dindigul on receipt of a copy of F.I.R took up investigation and examined the witnesses. P.W.38 Mohan

Duraisamy, Deputy Superintendent of Police, EOW II, Theni took up further investigation and laid a charge sheet against the accused.

3. In order to prove the charges levelled against the accused, the prosecution examined 38 witnesses and marked 181 exhibits. No M.Os were marked. The accused were questioned under Section 313 Cr.P.C. as to the incriminating circumstances found in the evidence of prosecution witnesses. Three witnesses were examined on the side of the accused. The second accused examined himself as D.W.1, wherein he has stated that he was the sole Proprietor of the first accused and the other accused have no connection with the Financial Establishment; that all the receipts for discharge were with PW1; that due to enmity between him and PW1, a false case has been foisted against him and his family members. D.W.2 Azhagesan and D.W.3 Rajakan have deposed that only A2 was carrying on the business in the name of Sri Bhuvaneswari Finance and others were nothing to do with the same. On consideration of the rival submissions, the lower court found A1 to A3 guilty and sentenced them as stated above and had acquitted A4 to A7. Aggrieved A1 to A3 have brought forth these appeals.

4. Advancing his arguments on behalf of the appellants, the learned counsel would submit that the prosecution has not proved its case on any one of the provisions of TNPID Act or I.P.C ; that having found that there was no criminal conspiracy or breach of trust or cheating, the lower court should have acquitted the appellants in respect of the other charges also; that the second accused has examined himself as D.W.1 and has categorically deposed that all the deposits were duly discharged and all the deposit vouchers were in the hands of P.W.1; that P.W.1 due to enmity has not only given a false complaint, but also instigated all other witnesses to give a false complaint; that without proper investigation of the matter, the police has laid a charge sheet, and that while the lower court has acquitted A4 to A7, it should not have found A1 to A3 guilty on the same evidence adduced.

5. Added further the learned counsel that insofar as A3 was concerned, there was no iota of evidence; that even the charge sheet originally laid by the police would clearly reveal that A2 was the sole Proprietor of A1 Financial Establishment; that A2 has categorically deposed that he was the sole Proprietor of A1 concern and the other accused have nothing to do with the same; that his evidence is also fully corroborated by Dws.2 and 3; that the lower court has erroneously relied on the recital in a stray document, namely, the promissory note Ex.P.178 to hold that A3 was also a Partner of A1 Financial Establishment; that there is no material available in the whole case bundle; that while so, the lower court should have acquitted A3, since he has nothing to do with the said Financial Establishment A1 and hence, the judgment of the lower court has got to be set aside.

6. Strongly opposing all the contentions put forth by the appellants' side, the learned Government Advocate would submit that the lower court has correctly found A1 to A3 guilty under Section 5 of TNPID Act in view of the overwhelming documentary and oral evidence available; that it is not correct on the part of the appellants' side to state that A3 had nothing to do with the said Financial Establishment in view of the recital under Ex.P.178, promissory note wherein it has been clearly incorporated that A3 was also a Partner of the said Financial Establishment, and hence, the lower court only on elaborate discussion has come to a correct conclusion that A1 to A3 guilty and hence it has got to be affirmed.

7. Admittedly, Sri Bhavaneshwari Finance, Main Bazar, Uthamapalayam is a Financial institution, which was conducting a deposit scheme under various heads. It is also not in dispute that the amounts were collected by way of Fixed deposits from the above said prosecution witnesses and fixed deposit receipts were also issued to them. In the course of the business transaction, amounts were collected from the above mentioned depositors and passbooks have also been issued. In respect of the amounts received from Pws.2, 3, 20, 21, 23, 26, 27, 28, 31, 32, and 33, the accused 2 to 5 have executed promissory notes and for the amount received from P.W.22 Narayanan, the accused 3 to 5 have executed promissory note under Ex.P.111, while so, the said Financial Establishment was abruptly closed without returning the amounts payable to the above depositors, which constrained P.W.1 to lodge a complaint to P.W.37 Sub Inspector of Police, EOW II, Theni under Ex.P.1. On the strength of which, a case was registered by him. Ex.P.181 was the printed F.I.R in that regard. Investigation was taken up by the Inspector of Police and further investigation was taken up by P.W.38, the then Deputy Superintendent of Police, EOW II, Theni. During the course of the said investigation, number of complaints were given by the other witnesses.
8. Admittedly, amounts were collected from all the complainants in the name of Bhuvaneshwari Finance under various schemes. It is also not in dispute that the business of the said Financial Establishment was abruptly closed without making payment to the depositors, and hence there arose a necessity to file complaints. It remains to be stated that A2 has not disputed the fact that amounts were collected from the public including the above prosecution witnesses under Fixed Deposit schemes and other deposit schemes. But, he came forward with a defence stating that all the fixed deposits were paid and the deposit vouchers were in the hands of P.W.1. As rightly pointed out by the lower court, no material was placed to accept the defence plea that all the fixed deposits were paid by the said Financial Establishment and in the absence of the same, it cannot be accepted. While so, by satisfactory evidence, the prosecution has proved that the amounts were collected in the name of the first accused from the depositors, but no material is available to show that those deposits were paid back to the depositors. The lower court was perfectly correct in holding that the second accused has not paid the fixed deposit amounts to the depositors, and thus, he was liable for punishment under Section 5 of TNPID Act and also the lower court was correct in finding the Financial Establishment guilty under Section 5 of TNPID Act. The lower court on proper reasoning has rejected the case of the prosecution in respect of criminal conspiracy that A2 to A7 hatched up conspiracy in order to cheat the depositors and also breach of trust alleged to have been committed by the accused. The lower court has also found A3 guilty under Section 5 of TNPID Act. But, in view of the facts and circumstances of the case, this Court has to agree with the contention put forth by the 3rd accused. In a charge sheet that was laid after full investigation of the case, it has been stated that "A1 Bhuvaneshwari Finance, Main Bazar, Uthamapalayam represented by Ramanathan Proprietor." The said Ramanathan is shown as second accused. No material was placed in the hands of the lower court to hold that the third accused had any connection with the Financial transaction or business carried on in the name of the first accused, except the only one pronote under Ex.P.178. Had the contention of the prosecution been true that the first accused Financial Establishment was a

partnership firm or A3 was the Partner of the same, materials could have been recovered at the time of investigation. It was not a case of prosecution while filing charge sheet that the said A1 Financial Establishment was a partnership firm, but it was proprietary concern of A2. When A2 was questioned under Section 313 of Cr. P.C., he has categorically stated that the business in the name of A1 was run by him and the accused Nos.3 to 7 had nothing to do with the same. He examined himself as D.W.1 and two more independent witnesses were also examined as D.Ws.2 and 3. All the defence witnesses have deposed to the fact that the business in the name of A1 was run by A2 and the others have nothing to do with the same. In the face of material placed by the prosecution and the evidence adduced by the defence side, it would be abundantly clear that A1 Financial Establishment was only a proprietary concern run by A2, wherein A3 had nothing to do.

9. The lower court has much relied on the stray document, namely Ex.P.178, Promissory note, wherein it was found that A3 was also a Partner of the said firm. The said document would not be suffice to convert or to hold the proprietary concern run by A2 as partnership firm. The reasonings adduced by the lower court for acquitting A4 to A7 are equally applicable to A3 also. Hence, without any hesitation it can be held that A3 is not liable to be punished under Section 5 of TNPID Act. Hence, A3 has got to be acquitted of all the charges levelled against him.

10. Coming to the question of punishment, the court is of the view that the sentence awarded by the lower court on A1 has got to be confirmed and in respect of A2 is concerned, sentence awarded by the lower court under Section 5 of TNPID Act has got to be reduced to 5 years R.I which meet the ends of justice. Therefore, the sentence of 6 years R.I imposed by the lower court to A2 under Section 5 of TNPID Act is reduced to five years. In other respect, the judgment of the lower court in respect of A1 and A2 is confirmed. With the above modification, the Criminal Appeal No.1759 of 2002 is dismissed. Criminal Appeal No.1760 of 2002 is allowed. The conviction and sentence imposed upon the accused No.3 by the trial court are set aside. He is acquitted of all the charges levelled against him. Fine amounts, if any paid by him, shall be refunded to A3.

Index : Yes
Internet : Yes
vvk

To

1. The Special Judge, TNPID Act. 1997, Chennai-104
2. The Principal Judge, Chennai
3. The Superintendent, Central Prison, Vellore
4. The Public Prosecutor, Madras
5. The Dy. Inspector of Police, Chennai-4

6. Mr.O.Srinath, Govt. Advocate(Crl. Side),
High Court, Chennai
7. The Inspector of Police
Economic Offence Wing II, Theni District